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CLERK, U.S. DISTRICT COURT
SAN JOSE

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ADR

10 Attorneys for Defendant
11 WIRELESS LIFESTYLE,
12 INC.

13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION

CV 11-05132

17 YASMIN MARTINEZ, individually and on
18 behalf of other persons similarly situated,

No.

19 Plaintiff,

20 vs.

21 WIRELESS LIFESTYLE, INC.; and DOES
22 1 through 10,

23 Defendant.

DEFENDANT WIRELESS LIFESTYLE,
INC.'S NOTICE OF REMOVAL UNDER
CAFA, 28 U.S.C. § 1332, 28 U.S.C. § 1441,
28 U.S.C. § 1446, AND 28 U.S.C. § 1453

SNR DENTON US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

BY FAX

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
 2 NORTHERN DISTRICT OF CALIFORNIA AND TO PLAINTIFF AND HER ATTORNEYS
 3 OF RECORD:

4 PLEASE TAKE NOTICE that pursuant to the Class Action Fairness Act ("CAFA"), 28
 5 U.S.C. § 1332 ("diversity jurisdiction"), 28 U.S.C. § 1441, 28 U.S.C. § 1446 and 28 U.S.C.
 6 § 1453, defendant Wireless Lifestyle, Inc. ("Wireless Lifestyle") hereby removes the above-
 7 captioned matter from the Superior Court of the State of California, Santa Clara County to this
 8 Court. The grounds for removal are as follows:

9 **I. BACKGROUND**

10 1. On September 13, 2011, plaintiff Yasmin Martinez ("Plaintiff") filed a civil action,
 11 on behalf of a putative California class, in the Superior Court of the State of California, Santa
 12 Clara County, entitled *Yasmin Martinez, individually and on behalf of other persons similarly*
 13 *situated, v. Wireless Lifestyle, Inc.; and Does 1 through 10*, Case No. 111CV209093 (the "State
 14 Court Action"). Pursuant to 28 U.S.C. § 1446(a), Wireless Lifestyle has attached all pleadings
 15 filed and served upon it in the state court proceedings as Exhibit A.

16 2. Plaintiff alleges causes of action for: (1) failure to pay commission wages upon
 17 termination (in violation of California Labor Code §§ 201, 202, and 203); (2) unlawful forfeiture
 18 of vacation (in violation of California Labor Code § 227.3); (3) unfair competition (in violation
 19 of California Business & Professions Code § 17200); (4) failure to pay regular wages timely
 20 upon termination (in violation of California Labor Code §§ 201, 202, and 203); and (5) failure to
 21 pay commission wages timely upon termination (in violation of California Labor Code §§ 201,
 22 202, and 203).

23 3. Plaintiff filed this class action against defendant Wireless Lifestyle, a Kansas
 24 corporation with retail locations in California. (Complaint ¶ 8.)

25 4. The summons and complaint were served on Wireless Lifestyle on September 19,
 26 2011. A copy of the service of process receipt in the State Court Action is attached hereto as
 27 Exhibit B.
 28

5. The State Court Action is removable to this Court, and this Court has jurisdiction over this action, under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332, as well as 28 U.S.C. § 1441 (a) and (b), and 28 U.S.C. § 1453, because the State Court Action satisfies all the requirements under CAFA for federal jurisdiction. Based upon the allegations in the Complaint: (1) the proposed class consists of more than 100 putative class members; (2) the parties are minimally diverse; (3) the amount in controversy exceeds the \$5,000,000 jurisdictional threshold; and (4) the exceptions to CAFA preventing removal do not apply here.

6. Alternatively, the State Court Action is removable to this Court, and this Court has diversity jurisdiction over this action, under 28 U.S.C. §§ 1332, 1441, and 1446, because complete diversity exists, and the amount in controversy for Plaintiff’s claims exceeds \$75,000.

II. THIS COURT HAS JURISDICTION UNDER CAFA

7. Plaintiff alleges that this case is brought as a class action and appears to seek certification of a putative class under California Code of Civil Procedure section 382. (Complaint ¶¶ 11, 12.) Plaintiff filed this putative class action on behalf of “former employees of Defendant not paid all the sales commissions owed to them, not paid all the vacation owed to them, not paid their regular wages timely upon termination, and/or not paid their commission wages timely upon termination.” (Complaint ¶ 7.) Therefore, this action is a proposed “class action” under 28 U.S.C. § 1332(d)(1)(B), defined as “any civil action filed under Rule 23 of the Federal Rules of Civil Procedure or similar State statute of rule of judicial procedure authorizing an action to be brought by one or more representative persons as a class action.”

8. CAFA reflects Congress’s intent to have federal courts adjudicate substantial class action suits brought against out-of-state defendants. Toward that end, CAFA expands federal jurisdiction over class actions, and expressly provides that class actions filed in state court are removable to federal court where (a) the putative class contains at least 100 class members; (b) any member of the putative class is a citizen of a State different from that of any defendant; and (c) the aggregate amount in controversy for the putative class exceeds \$5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d); *accord Serrano v. 180 Connect, Inc.*, 478 F.3d 1018,

1 1020-21 (9th Cir. 2007). This suit satisfies all the requirements under CAFA for federal
2 jurisdiction.

3 **A. The Putative Class Exceeds 100 Members.**

4 9. CAFA requires that the class consist of at least 100 persons. 28 U.S.C. § 1332(d)(5).
5 That requirement is met here. Plaintiff alleges that there are “not less than 500 members in the
6 class.” (Complaint ¶ 12(a).)

7 **B. Minimal Diversity Exists.**

8 10. CAFA requires minimal diversity; that is, at least one putative class member must
9 be a citizen of state different than one defendant. 28 U.S.C. § 1332(d)(2). Here, the putative class
10 contains at least one putative class member who is a citizen of the State of California, namely,
11 plaintiff Yasmin Martinez. (Complaint ¶ 6.) Defendant Wireless Lifestyle is citizen of Kansas
12 because it is incorporated under the laws of the State of Kansas with its principal place of
13 business in Lenexa, Kansas. (See Complaint ¶ 8; 28 U.S.C. § 1332(c)(1).) Thus, minimal
14 diversity exists here. 28 U.S.C. § 1332(d)(2).

15 **C. The CAFA Amount-in-Controversy Requirement is Satisfied.**

16 11. CAFA also requires that the aggregate amount in controversy exceed \$5,000,000
17 for the entire putative class, exclusive of interest and costs. 28 U.S.C. § 1332(d)(6) (“In any
18 class action, the claims of the individual class members shall be aggregated to determine
19 whether the amount in controversy exceeds the sum or value of \$5,000,000, exclusive of interest
20 and costs.”).

21 12. When a plaintiff fails to plead a specific amount of damages and if the amount in
22 controversy is not “facially apparent” from the complaint, “the court may consider facts in the
23 removal petition” to determine the amount at issue. *Kroske v. U.S. Bank Corp.*, 432 F.3d 976,
24 980 (9th Cir. 2005) (quoting *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th
25 Cir. 1997)). A defendant need only make a factual showing that it is more likely than not the
26 amount in controversy exceeds \$5,000,000. *Singer*, 116 F.3d at 376. The ultimate inquiry
27 depends on what “amount [is] put in controversy by the plaintiff’s complaint”—not what a
28 defendant will actually owe. *Rippee v. Boston Mkt. Corp.*, 408 F. Supp. 2d 982, 986 (S.D. Cal.

2005). In considering whether the amount in controversy is met, courts may consider the statutory maximum penalty available under the claims asserted. *See Chabner v. United of Omaha Life Ins. Co.*, 225 F.3d 1042, 1046 n.3 (9th Cir. 2000).

13. Wireless Lifestyle denies any liability in this case and intends to vigorously oppose class certification. For purposes of jurisdictional requirements for removal purposes only, however, Wireless Lifestyle submits the following evidence showing that the allegations in the Complaint put at controversy, in the aggregate, an amount that exceeds \$5,000,000.

14. Plaintiff's first cause of action alleges that Wireless Lifestyle failed to pay "all wages earned and unpaid prior to termination." (Complaint ¶¶ 16, 17.) Plaintiff also alleges that she was not paid the commission wages she earned during her last month of employment. (Complaint ¶ 18.) Based on Wireless Lifestyle's records, Plaintiff earned an average of \$2,833.33 in wages and \$1,153.99 in commissions each month. (Declaration of Kimberly Rawlings ("Rawlings Dec."), ¶ 3, attached hereto as Exhibit C.) Without conceding that Plaintiff is actually owed any such wages or commissions, the amount in controversy for Plaintiff's individual unpaid-wages claim would be approximately \$3,987.32. Assuming Plaintiff's allegation that "the claims of Plaintiff are typical of the claims of the other class members who Plaintiff seeks to represent," (Complaint ¶ 12(c)), the amount in controversy for the unpaid-wages claim would be \$1,993,660.00 for the putative class as a whole. *See Rippee*, 408 F. Supp. at 986 (the amount in controversy is properly evaluated based on Plaintiff's allegations regarding damages and the defendant's own employment data).

15. Plaintiff's second cause of action alleges that Wireless Lifestyle failed to pay accrued, but unused, vacation time. (Complaint ¶ 27.) Plaintiff alleges that she began accruing vacation on May 1, 2011. (Complaint ¶ 6.) Under California law, vacation accrued is to be paid out to the employee "as wages at [her] final rate." Cal. Labor Code. § 227.3. Without conceding that Plaintiff is actually owed any accrued vacation, based on Wireless Lifestyle's employment records, if Plaintiff had accrued one week of vacation, the amount in controversy for Plaintiff's unpaid-vacation claim would be approximately \$683.85 (\$1,307.69 in wages per two-week pay period, divided by two). Assuming Plaintiff's allegation that "the claims of Plaintiff are typical

1 of the claims of the other class members who Plaintiff seeks to represent,” (Complaint ¶ 12(c)),
 2 the amount in controversy for the unpaid-vacation claim would be \$326,922.50 for the putative
 3 class as a whole. *See Rippee*, 408 F. Supp. at 986.

4 16. Plaintiff’s first, fourth, and fifth causes of action allege that Wireless Lifestyle
 5 willfully failed to pay wages and commissions due upon termination of Plaintiff’s employment,
 6 thereby purportedly entitling Plaintiff to up to 30 days of waiting-time penalties under California
 7 Labor Code § 203. (Complaint ¶¶ 18, 20, 39, 41, 48, 49.) Without conceding that Plaintiff is
 8 actually entitled to any penalty wages, based on a calculation of Plaintiff’s average daily rate of
 9 pay, including wages and commissions, the amount in controversy for Plaintiff’s waiting-time
 10 penalties would be approximately \$5,520.90 (\$130.77 in daily wages plus \$53.26 in daily
 11 commissions, multiplied by 30 days). (Rawlings Dec., ¶ 3.) Assuming Plaintiff’s allegation that
 12 “the claims of Plaintiff are typical of the claims of the other class members who Plaintiff seeks
 13 to represent,” (Complaint ¶ 12(c)), the amount in controversy for waiting-time penalties would
 14 be \$2,760,457.15 for the putative class as a whole. *See Rippee*, 408 F. Supp. at 986.

15 17. In addition, attorneys’ fees are included in determining the amount in controversy.
 16 *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) (“[W]here an underlying
 17 statute authorizes an award of attorneys’ fees . . . such fees may be included in the amount in
 18 controversy.”). Here, with the exception of Plaintiff’s third claim, under California Business
 19 and Professions Code § 17200, all of her alleged claims allow for the recovery of attorneys’
 20 fees. In a successful wage and hour class action involving a putative class of several hundred
 21 members, such attorneys’ fees often exceed \$760,000.00.

22 18. Accordingly, the amount in controversy for the putative class as a whole includes at
 23 least \$1,993,660.00 for the unpaid-wages claim; at least \$326,922.50 for the unpaid-vacation
 24 claim; at least \$2,760,457.15 for waiting-time penalties; and approximately \$760,000.00 for
 25 attorneys’ fees. In sum, the total amount in controversy for the putative class as a whole is at
 26
 27
 28

1 least \$5,841,039.65. For the foregoing reasons, it is more likely than not that the amount in
2 controversy easily exceeds \$5,000,000.¹

3 19. Moreover, the exceptions to CAFA preventing removal do not apply here.

4 **III. THIS COURT HAS DIVERSITY JURISDICTION UNDER 28 U.S.C. § 1332.**

5 20. Under 28 U.S.C. § 1332, federal district courts have original jurisdiction over all
6 civil actions in which: (1) complete diversity exists between all plaintiffs and all defendants, and
7 (2) the amount in controversy exceeds \$75,000. *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 89
8 (2005).

9 **A. Complete Diversity of Citizenship Exists.**

10 21. Complete diversity of citizenship requires that no single plaintiff be a citizen of the
11 same state as any single defendant. *Id.* In a putative class-action suit, the court looks only to the
12 citizenship of the named plaintiffs. *Snyder v. Harris Gas Serv. Co.*, 394 U.S. 332, 340 (1969).
13 Here, Plaintiff is a resident of Santa Clara County, California. (Complaint ¶ 6.) Wireless
14 Lifestyle is a citizen of Kansas in that it is incorporated under the laws of Kansas and has its
15 principal place of business in Lenexa, Kansas. (See Complaint ¶ 8; 28 U.S.C. §1332(c)(1).)
16 Accordingly, complete diversity exists in this case.

17 **B. The Amount-in-Controversy Requirement is Satisfied.**

18 22. Wireless Lifestyle denies any liability in this case and intends to vigorously oppose
19 class certification. As detailed above, however, for purposes of jurisdictional requirements for
20 removal purposes only, the amount in controversy for Plaintiff's first cause of action, for unpaid
21 wages, would be approximately \$3,987.32; the amount in controversy for Plaintiff's second
22 cause of action, for unpaid vacation, would be approximately \$683.85; and the amount in
23 controversy for waiting-time penalties, for Plaintiff's first, fourth, and fifth causes of action,
24 would be approximately \$5,068.20. Additionally, in a single plaintiff's successful wage and
25 hour action, attorneys' fees often exceed \$80,000.00.

26
27 ¹ Because the named plaintiff, Martinez, only worked for Wireless Lifestyle for approximately
28 six months, the claimed damages will likely be substantially greater on a pro rata approximate
basis for the other class members, because Wireless Lifestyle has conducted business in
California for at least 18 months.

23. Accordingly, the amount in controversy for the Martinez's individual claims includes at least \$3,987.32 for the unpaid-wages claim; at least \$683.85 for the unpaid-vacation claim; at least \$5,068.20 for waiting-time penalties; and approximately \$80,000.00 for attorneys' fees. In sum, the total amount in controversy for Martinez's individual claims is at least \$89,739.37. For the foregoing reasons, it is more likely than not that the amount in controversy exceeds \$75,000.

IV. REMOVAL TO THE NORTHERN DISTRICT OF CALIFORNIA IS PROPER

24. This Notice of Removal is filed within thirty days of September 19, 2011, when Plaintiff served the summons and complaint in the State Court Action on Wireless Lifestyle. Thus, this Notice of Removal is timely filed in accordance with 28 U.S.C. § 1446(b).

25. The United States District Court for the Northern District of California, San Jose Division, embraces the county and court in which Plaintiff filed this case. 28 U.S.C. § 84(a). Therefore, this action is properly removed to this Court pursuant to 28 U.S.C. § 1441(a).

26. Wireless Lifestyle has attached all the pleadings, process, and orders filed in the record of the State Court Action as Exhibits A and B, as required by 28 U.S.C. § 1446(a).

27. Wireless Lifestyle will promptly serve Plaintiff with this Notice of Removal and will promptly file a copy of this Notice of Removal with the clerk of the Superior Court of the State of California for the County of Santa Clara, as required by 28 U.S.C. § 1446(d).

WHEREFORE, Wireless Lifestyle respectfully requests that this proceeding, entitled *Yasmin Martinez, individually and on behalf of other persons similarly situated, v. Wireless Lifestyle, Inc.; and Does 1 through 10*, Case No. 111CV209093, now pending in the Superior Court of the State of California, County of Santa Clara, be removed to this Court.

Dated: October 19, 2011

SNR DENTON US LLP

By


ANDREA M. KIMBALL

Attorneys for Defendant
WIRELESS LIFESTYLE, INC.

EXHIBIT A

9/14/11 2:35

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Gregory N. Karasik (SBN 115834) Karasik Law Firm 11835 W. Olympic Blvd., Suite 1275 Los Angeles, CA 90064 TELEPHONE NO.: (310) 312-6800 FAX NO.: (310) 943-2582 ATTORNEY FOR (Name): Plaintiff Yasmin Martinez		FOR COURT USE ONLY ENDORSED FILED SEP 13 2011 Dated at _____ of the Superior Court County of Santa Clara, California By: <u>Gregory N. Karasik</u>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 North First Street MAILING ADDRESS: Same CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Downtown		
CASE NAME: Martinez v. Wireless Lifestyle, Inc.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		CASE NUMBER: 111CV209093 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/DPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/DPD/WD (23) Non-P/DPD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/DPD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 5
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: September 9, 2011

Gregory N. Karasik

(TYPE OR PRINT NAME)

SIGNATURE OF PARTY OR ATTORNEY FOR PARTY

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

Exhibit A
Page 9

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—
Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)
Employment
Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller
Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)
Enforcement of Judgment
Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

SUMMONS
(CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

WIRELESS LIFESTYLE, INC. and DOES 1 through 10

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

YASMIN MARTINEZ, individually and on behalf of other persons similarly situated,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)**FILED**

SEP 13 2011

David H. Yamashita, Clerk of the Superior Court
County of Santa Clara, CaliforniaBy: R. R. Spitters
Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center: (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Santa Clara County Superior Court
191 N. First Street, San Jose, CA 95113-1090
DowntownCASE NUMBER:
(Número del Caso):**111CV209093**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Gregory N. Karasik (SBN 115834) Karasik Law Firm 11835 W Olympic Blvd Ste 1275 Los Angeles, CA 90064

DATE:

(Fecha)

SEP 13 2011Clerk, by
(Secretario)R. R. Spitters Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant2. ☐ as the person sued under the fictitious name of (specify):3. ☒ on behalf of (specify):

WIRELESS LIFESTYLE, INC.

under:

☒ CCP 416.10 (corporation)☐ CCP 416.20 (defunct corporation)☐ CCP 416.40 (association or partnership)☐ other (specify):☐ CCP 416.60 (minor)☐ CCP 416.70 (conservatee)☐ CCP 416.90 (authorized person)4. ☒ by personal delivery on (date):

9/19/11

FAKED

ENDORSED
FILED

SEP 13 2011

David H. Yarnall, Clerk of the Superior Court
County of Santa Clara, California

By:
Deputy Clerk

E.R. Spitters

Gregory N. Karasik (SBN 115834)
greg@karasiklawfirm.com
Karasik Law Firm
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Attorneys for Plaintiff
YASMIN MARTINEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

YASMIN MARTINEZ, individually and on
behalf of other persons similarly situated,

Plaintiffs,

vs.

WIRELESS LIFESTYLE, INC; and DOES 1
through 10.

Defendants.

Case No. **111CV209093**

CLASS ACTION

COMPLAINT

1. Failure to Pay Commission Wages Upon Termination
2. Unlawful Forfeiture of Vacation
3. Unfair Competition
4. Failure to Pay Regular Wages Timely Upon Termination
5. Failure to Pay Commission Wages Timely Upon Termination

DEMAND FOR JURY TRIAL

FAXED

Plaintiff Yasmin Martinez ("Plaintiff"), on behalf of herself and all others similarly situated, complains and alleges as follows:

INTRODUCTION

1. This class action lawsuit arises out of the failure to defendant Wireless Lifestyles, Inc. ("Defendant") to comply with various labor laws in connection with the termination of Defendant's employees. Defendant fails to pay the sales commissions earned by terminated employees during their last calendar month of employment in accordance with Labor Code Sections 201 or 202; Defendant

1 fails to pay employees upon termination for all their accrued but unused vacation in accordance with
 2 Labor Code Section 227.3; Defendant fails to pay terminated employees their regular wages timely
 3 upon termination in accordance with Labor Code Sections 201 or 202; and Defendant fails to pay
 4 terminated employees their commission wages timely upon termination in accordance with Labor
 5 Code Sections 201 or 202. Defendant's failure to pay upon termination all commission wages and
 6 vacation owed to employees in violation of the Labor Code also constitutes unfair competition.

7 2. Plaintiff is a member of and seeks to be the class representative for the Unpaid
 8 Commissions Class, Unpaid Vacation Class, Unfair Competition Class, Late Regular Wages Class and
 9 the Late Commission Wages Class (collectively the "Class") defined in paragraph 11 below.

10 3. Plaintiff seeks damages, restitution and statutory penalties to which Plaintiff and other
 11 class members are entitled under the Labor Code and/or Business and Professions Code Section 17203.

12 JURISDICTION AND VENUE

13 4. Venue is proper in this Judicial district and the County of Santa Clara because work was
 14 performed by class members in the County of Santa Clara and Defendant's legal obligations to class
 15 members under California law arose and were breached in the County of Santa Clara.

16 5. The California Superior Court has jurisdiction in this matter because Plaintiff is a
 17 resident of California, Defendant is qualified to do business in California, and Defendant regularly
 18 conducts business in California. Further, there is no federal question at issue as the claims herein are
 19 based solely on California law.

20 THE PARTIES

21 Plaintiff

22 6. Plaintiff is a resident of Santa Clara County in California. From November 1, 2010 to
 23 May 12, 2011 Plaintiff worked for Defendant as the store manager of Defendant's retail store located
 24 in the Oakridge Mall in San Jose, California. On May 13, 2011, Plaintiff was advised by Defendant
 25 that she was being suspended without pay. On May 16, 2011, Plaintiff was advised by Defendant that
 26 her employment with Defendant was terminated. Despite discharging Plaintiff on May 16, 2011,
 27 Defendant did not pay Plaintiff her final regular wages that day. Defendant did not issue Plaintiff a
 28 paycheck for regular wages until May 20, 2011, the regular pay date for the preceding pay period.

1 During her employment with Defendant, Plaintiff earned sales commissions, which became payable at
2 the end of the month after the month in which the sales commissions were earned. The amount of
3 sales commissions due for any month was calculable after expiration of the 30 day period given to
4 customers to cancel sales. Although Defendant could have calculated the sales commissions earned by
5 Plaintiff for the month of April 2011 sooner, Defendant did not issue Plaintiff a paycheck for the sales
6 commissions she earned for the month of April 2011 until May 31, 2011, the regular pay date for
7 commissions earned the previous month. In accordance with Defendant's vacation policy, Plaintiff
8 started accruing vacation on May 1, 2011 at the beginning of her seventh month of employment.
9 Although Plaintiff accrued vacation for the time she worked for Defendant in May 2011 prior to being
10 discharged, Defendant did not pay Plaintiff upon or after termination for any of her accrued but unused
11 vacation. Although Plaintiff made sales in May 2011 prior to being discharged for which she earned
12 sales commissions, Defendant did not pay Plaintiff upon or after termination for any of the sales
13 commissions she earned for May 2011. To date, Defendant has not paid Plaintiff the commission
14 wages still owed to her, the vacation still owed to her, or any penalty wages owed to her under Labor
15 Code Section 203.

16 7. The members of the Class are identifiable, similarly situated persons who are former
17 employees of Defendant not paid all the sales commissions owed to them, not paid all the vacation
18 owed to them, not paid their regular wages timely upon termination, and/or not paid their commission
19 wages timely upon termination.

20 Defendants

21 8. Defendant is a corporation organized under the laws of the state of Kansas. Defendant
22 sells wireless telephone products and services at retail stores at various locations in California. At all
23 times relevant to this action, Defendant was the employer of Plaintiff and other members of the Class.

24 9. Plaintiff is ignorant of the true names, capacities, relationships and extent of
25 participation in the conduct herein alleged of the Defendants sued herein as DOES 1 through 10, but is
26 informed and believes and thereon alleges that said defendants are legally responsible for the wrongful
27 conduct alleged herein and therefore sue these defendants by such fictitious names. Plaintiff will
28 amend this complaint to allege their true names and capacities when ascertained.

10. Plaintiff is informed and believes and thereon alleges that each defendant acted in all respects pertinent to this action as the agent of the other defendants and/or carried out a joint scheme, business plan or policy in all respects pertinent hereto, and/or the acts of each defendant are legally attributable to the other defendants.

CLASS ACTION ALLEGATIONS

11. Plaintiff brings this action on behalf of herself and on behalf of all other similarly situated persons as a class action pursuant to Code of Civil Procedure Section 382. The members of the Class belong to the Unpaid Commissions Class, Unpaid Vacation Class, Unfair Competition Class, Late Regular Wages Class and the Late Commission Wages Class, which are defined as follows:

Unpaid Commissions Class: All persons who worked for Defendant in the state of California, whose employment with Defendant ended at any time since the date three years prior to the filing of the complaint in this action, who earned sales commissions during the last calendar month of their employment.

Unpaid Vacation Class: All persons who worked for Defendant in the state of California, whose employment with Defendant ended at any time since the date three years prior to the filing of the complaint in this action, who had accrued but unused vacation at the time their employment terminated.

Unfair Competition Class: All persons who worked for Defendant in the state of California, whose employment with Defendant ended at any time since the date four years prior to the filing of the complaint in this action, who either earned sales commissions during the last calendar month of their employment or who had accrued but unused vacation at the time their employment terminated.

Late Regular Wages Class: All persons who worked for Defendant in the state of California, whose employment with Defendant ended at any time since the date three years prior to the filing of the complaint in this action, for whom Defendant issued a final paycheck for regular wages one or more days after discharge or more than three days after resignation.

Late Commission Wages Class: All persons who worked for Defendant in the state of

1 California, whose employment with Defendant ended at any time since the date three
 2 years prior to the filing of the complaint in this action, for whom Defendant issued a final
 3 paycheck for commission wages more than 31 days after their last day worked.

4 12. This action has been brought and may be maintained as a class action pursuant to Code
 5 of Civil Procedure Section 382 because there is a well defined community of interests among many
 6 persons who comprise a readily ascertainable class:

7 a. The Class members are so numerous that the individual joinder of all of them as
 8 named plaintiffs is impracticable. While the exact number of Class members is
 9 unknown to Plaintiff at this time, Plaintiff is informed and believes and thereon
 10 alleges that there are not less than 100 members in the Unpaid Commissions
 11 Class, not less than 100 members in the Wage Statement Class, not less than 100
 12 members in the Unpaid Vacation Class, not less than 100 members in the Unfair
 13 Competition Class, not less than 100 members in the Late Regular Wages Class,
 14 not less than 100 members in the Late Commission Wages Class, and not less
 15 than 500 members in the Class.

16 b. Common questions of law and fact exist as to members of the Class and
 17 predominate over any questions which affect only individual members of the
 18 Class. These common questions include, but are not limited to:

19 (1) Did Defendant, in violation of Labor Code Sections 201 or 202, fail to
 20 pay terminated employees commission wages earned prior to termination?

21 (2) Did Defendant, in violation of Labor Code Section 227.3, fail to pay
 22 terminated employees accrued but unused vacation?

23 (3) Did Defendant, by violating Labor Code Sections 201, 202 or 227.3,
 24 engage in unfair competition in violation of Business and Professions Code
 25 Section 17200?

26 (4) Did Defendant, in violation of Labor Code Sections 201 or 202, fail to
 27 pay terminated employees their final regular wages timely upon termination?

28 (5) Did Defendant, in violation of Labor Code Sections 201 or 202, fail to

1 pay terminated employees their final commission wages timely upon
2 termination?

3 (6) Is Defendant liable for damages under Labor Code Sections 201 or 202?

4 (7) Is Defendant liable for damages under Labor Code Section 227.3?

5 (8) Is Defendant liable for restitution under Business and Professions Code
6 Section 17203?

7 (9) Is Defendant liable for penalty wages under Labor Code Section 203?

8 c. Plaintiff is a member of the Unpaid Commissions Class, Unpaid Vacation Class,
9 Unfair Competition Class, Late Regular Wages Class and the Late Commission
10 Wages Class; and the claims of Plaintiff are typical of the claims of the other
11 class members who Plaintiff seeks to represent. Plaintiff was formerly employed
12 by Defendant and was subjected to the same unlawful practices as other
13 employees of Defendant. Plaintiff and other members of the Class suffered the
14 same injuries and seek the same relief.

15 d. Plaintiff will adequately and fairly protect the interests of the members of the
16 Class. Plaintiff has no interest adverse to the interests of absent class members
17 and Plaintiff is represented by legal counsel who have substantial class action
18 experience in civil litigation and employment law.

19 e. A class action is superior to other available means (if any) for fair and efficient
20 adjudication of the claims of the Class and would be beneficial for the parties
21 and the court. Class action treatment will allow a large number of similarly
22 situated persons to prosecute their common claims in a single forum
23 simultaneously, efficiently, and without the unnecessary duplication of effort and
24 expense that numerous individual actions would require. The monetary amounts
25 due to many individual Class members are likely to be relatively small, and the
26 burden and expense of litigation would make it difficult or impossible for Class
27 members to seek and obtain relief through individual lawsuits. A class action
28 will serve an important public interest by providing Class members an effective

1 mechanism for redress of violation of their statutory rights.

2 13. Plaintiff is presently unaware of any difficulties that are likely to be encountered in the
3 management of this action that would preclude its maintenance as a class action, but reserves the right
4 to modify his allegations and/or the class definitions based on further investigation, discovery or legal
5 developments.

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PAY COMMISSION WAGES UPON TERMINATION**

8 **(By Plaintiff and the Unpaid Commissions Class against Defendants)**

9 14. Plaintiff incorporates paragraphs 1 through 13 of this complaint as if fully alleged
10 herein.

11 15. At all relevant times, Plaintiff and the other members of the Unpaid Commissions
12 Class were employees of Defendant covered by Labor Code Sections 201 or 202.

13 16. Pursuant to Labor Code Sections 201 or 202, Plaintiff and the other members of
14 the Unpaid Commissions Class were entitled upon termination to timely payment of all wages
15 earned and unpaid prior to termination. Discharged employees were entitled to payment of all
16 wages earned and unpaid prior to discharge immediately upon termination. Employees who
17 resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72
18 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were
19 entitled to payment of all wages earned and unpaid prior to resignation at the time of resignation.

20 17. Defendant failed to pay Plaintiff and other members of the Unpaid Commissions
21 Class all wages earned and unpaid prior to termination in accordance with Labor Code Section
22 201 or 202. Plaintiff is informed and believes and thereon alleges that, during the limitations
23 period applicable to this cause of action, Defendant had a policy or practice of not paying after
24 termination the sales commissions earned by an employee during the last calendar month of his
25 or her employment.

26 18. Defendant's failure to pay Plaintiff and other members of the Unpaid
27 Commissions Class all commission wages earned prior to termination in accordance with Labor
28 Code Sections 201 or 202 was willful. Defendant had the ability to pay all commission wages

1 earned by employees during the last calendar month of their employment but intentionally
 2 adopted policies or practices incompatible with the requirements of Labor Code Section 201 and
 3 202. When Defendant failed to pay after termination the sales commissions earned by an
 4 employee during the last calendar month of his or her employment, Defendant knew what it was
 5 doing and intended to do what it did.

6 19. Pursuant to Labor Code Sections 201 or 202, Plaintiff and other members of the
 7 Unpaid Commissions Class are entitled to all sales commissions earned prior to termination that
 8 Defendant did not pay them.

9 20. Pursuant to Labor Code Section 203, Plaintiff and other members of the Unpaid
 10 Commissions Class are entitled to penalty wages, in the amount of one day's worth of wages for
 11 every day after the unpaid sales commissions were first due, up to a maximum of thirty days.

12 21. As a result of Defendant's conduct, Plaintiff and the other members of the Unpaid
 13 Commissions Class have suffered damages, in an amount subject to proof, to the extent they
 14 were not paid for all sales commissions wages earned prior to termination in violation of Labor
 15 Code Sections 201 or 202.

16 22. As a result of Defendant's conduct, Plaintiff and the other members of the Unpaid
 17 Commissions Class have suffered damages, in an amount subject to proof, to the extent they
 18 were not paid for all penalty wages owed to them under Labor Code Section 203.

19 23. Pursuant to Labor Code Sections 218 and 218.5, Plaintiff and other members of
 20 the Unpaid Commissions Class are entitled to recover the full amount of their unpaid wages,
 21 unpaid penalty wages, reasonable attorney's fees and costs of suit. Plaintiff and other members
 22 of the Unpaid Commissions Class are entitled to recover pre-judgment interest on all due wages
 23 and penalty wages under Labor Code Section 218.6 and/or Civil Code Section 3287(a).

24 SECOND CAUSE OF ACTION

25 UNLAWFUL FORFEITURE OF VACATION

26 (By Plaintiff and the Unpaid Vacation Class against Defendants)

27 24. Plaintiff incorporates paragraphs 1 through 13 of this complaint as if fully alleged
 28 herein.

25. At all relevant times, Plaintiff and the other members of the Unpaid Vacation Class were employees of Defendant covered by Labor Code Section 227.3.

26. Pursuant to Labor Code Section 227.3, 01 Plaintiff and the other members of the Unpaid Vacation Class were entitled upon termination to payment of vacation accrued but unused prior to termination

27. Defendant failed to pay Plaintiff and other members of the Unpaid Vacation Class all vacation accrued but unused prior to termination in accordance with Labor Code Section 227.3. Plaintiff is informed and believes and thereon alleges that, during the limitations period applicable to this cause of action, Defendant had a policy or practice of 1) not deeming accrued vacation payable until employees had worked for a certain period of time; and/or 2) not paying after termination any vacation accrued but unused prior to termination.

28. As a result of Defendant's conduct, Plaintiff and the other members of the Unpaid Vacation Class have suffered damages, in an amount subject to proof, to the extent they were not paid for all vacation accrued but unused prior to termination in violation of Labor Code Section 227.3.

29. Pursuant to Labor Code Sections 218, 218.5 and 218.6, Plaintiff and other members of the Unpaid Vacation Class are entitled to recover the full amount of their unpaid vacation, pre-judgment interest, reasonable attorney's fees and costs of suit.

THIRD CAUSE OF ACTION

UNFAIR COMPETITION

(By Plaintiff and the Unfair Competition Class against Defendants)

30. Plaintiff incorporates paragraphs 1 through 29 of this complaint as if fully alleged herein.

31. The unlawful conduct of Defendant alleged herein constitutes unfair competition within the meaning of Business and Professions Code Section 17200.

32. As a result of Defendant's unfair competition, Plaintiff and other members of the Unfair Competition Class have suffered injury in fact and lost money or property. Plaintiff and other members of the Unfair Competition Class have been deprived of their rights under the

1 Labor Code to receive upon termination all sales commissions earned prior to termination or all
 2 vacation accrued but earned prior to termination and Plaintiff and other members of the Unfair
 3 Competition Class have not been paid all the sales commissions or vacation owed to them.

4 33. Pursuant to Business and Professions Code Section 17203, Plaintiff and other
 5 members of the Unfair Competition Class are entitled to restitution of all the sales commissions,
 6 vacation, and interest thereon rightfully belonging to them that Defendant failed to pay them and
 7 wrongfully retained for itself by means of its unlawful business practices.

8 34. Plaintiff and the other members of the Unfair Competition Class are entitled to
 9 recover reasonable attorney's fees in connection with their unfair competition claims pursuant to
 10 Code of Civil Procedure Section 1021.5, the substantial benefit doctrine and/or the common fund
 11 doctrine.

12 FOURTH CAUSE OF ACTION

13 FAILURE TO PAY REGULAR WAGES TIMELY UPON TERMINATION

14 (By Plaintiff and the Late Regular Wages Class against Defendants)

15 35. Plaintiff incorporates paragraphs 1 through 13 of this complaint as if fully alleged
 16 herein.

17 36. At all relevant times, Plaintiff and the other members of the Late Regular Wages
 18 Class were employees of Defendant covered by Labor Code Sections 201 or 202.

19 37. Pursuant to Labor Code Sections 201 or 202, Plaintiff and the other members of
 20 the Late Regular Wages Class were entitled upon termination to timely payment of all wages
 21 earned and unpaid prior to termination. Discharged employees were entitled to payment of all
 22 wages earned and unpaid prior to discharge immediately upon termination. Employees who
 23 resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72
 24 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were
 25 entitled to payment of all wages earned and unpaid prior to resignation at the time of resignation.

26 38. Defendant failed to pay Plaintiff and other members of the Late Regular Wages
 27 Class all final regular wages timely upon termination in accordance with Labor Code Sections
 28 201 or 202. Plaintiff is informed and believes and thereon alleges that, during the limitations

1 period applicable to this cause of action, Defendants had a policy or practice of paying regular
2 wages earned prior to termination on the regular payday after termination.

3 39. Defendant's failure to pay Plaintiff and other members of the Late Regular Wages
4 Class regular wages timely upon termination in accordance with Labor Code Sections 201 or 202
5 was willful. Defendants had the ability to calculate and pay by the time regular wages were due
6 under Labor Code Sections 201 or 202 all regular wages earned prior to termination but
7 intentionally adopted policies or practices incompatible with the requirements of Labor Code
8 Sections 201 and 202. When Defendants failed to pay regular wages timely upon termination,
9 Defendant knew what it was doing and intended to do what it did.

10 41. Pursuant to Labor Code Section 203, Plaintiff and other members of the Late
11 Regular Wages Class are entitled to penalty wages, in the amount of one day's worth of wages
12 for every day from the date their final regular wages were first due upon termination until paid,
13 up to a maximum of thirty days.

14 42. As a result of Defendant's conduct, Plaintiff and the other members of the Late
15 Regular Wages Class have suffered damages, in an amount subject to proof, to the extent they
16 were not paid for all penalty wages owed to them under Labor Code Section 203.

17 43. Pursuant to Labor Code Sections 218 and 218.5, Plaintiff and other members of
18 the Late Final Wages Class are entitled to recover the full amount of their unpaid penalty wages,
19 reasonable attorney's fees and costs of suit. Plaintiff and other members of the Late Final Wages
20 Class are entitled to recover pre-judgment interest on all due penalty wages under Labor Code
21 Section 218.6 and/or Civil Code Section 3287(a).

22 **FIFTH CAUSE OF ACTION**

23 **FAILURE TO PAY COMMISSION WAGES TIMELY UPON TERMINATION**

24 **(By Plaintiff and the Late Commission Wages Class against Defendants)**

25 44. Plaintiff incorporates paragraphs 1 through 13 of this complaint as if fully alleged
26 herein.

27 45. At all relevant times, Plaintiff and the other members of the Late Commission
28 Wages Class were employees of Defendant covered by Labor Code Sections 201 or 202.

1 46. Pursuant to Labor Code Sections 201 or 202, Plaintiff and the other members of
2 the Late Commission Wages Class were entitled upon termination to timely payment of all
3 wages earned and unpaid prior to termination. Discharged employees were entitled to payment
4 of all wages earned and unpaid prior to discharge immediately upon termination. Employees
5 who resigned were entitled to payment of all wages earned and unpaid prior to resignation within
6 72 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were
7 entitled to payment of all wages earned and unpaid prior to resignation at the time of resignation.

8 47. Defendant failed to pay Plaintiff and other members of the Late Commission
9 Wages Class all commission wages timely upon termination in accordance with Labor Code
10 Sections 201 or 202. Plaintiff is informed and believes and thereon alleges that, during the
11 limitations period applicable to this cause of action, Defendant had a policy or practice of paying
12 sales commissions earned by employees for the month prior to the last calendar month of their
13 employment on the next regular payday for sales commissions after their termination, i.e. at the
14 end of the month following the month for which the sales commissions were earned.

15 48. Defendant's failure to pay Plaintiff and other members of the Late Commission
16 Wages Class sales commissions timely upon termination in accordance with Labor Code
17 Sections 201 or 202 was willful. Defendants had the ability to calculate and pay by the time
18 sales commissions were due under Labor Code Sections 201 or 202 all sales commissions earned
19 by employees for the month prior to their termination but intentionally adopted policies or
20 practices incompatible with the requirements of Labor Code Sections 201 and 202. When
21 Defendant failed to pay commission wages timely upon termination, Defendant knew what it
22 was doing and intended to do what it did.

23 49. Pursuant to Labor Code Section 203, Plaintiff and other members of the Late
24 Commission Wages Class are entitled to penalty wages, in the amount of one day's worth of
25 wages for every day from the date their sales commissions for the month prior to termination
26 were first due upon termination until paid, up to a maximum of thirty days.

27 50. As a result of Defendant's conduct, Plaintiff and the other members of the Late
28 Commission Wages Class have suffered damages, in an amount subject to proof, to the extent

1 they were not paid for all penalty wages owed to them under Labor Code Section 203.

2 51. Pursuant to Labor Code Sections 218 and 218.5, Plaintiff and other members of
3 the Late Commission Wages Class are entitled to recover the full amount of their unpaid penalty
4 wages, reasonable attorney's fees and costs of suit. Plaintiff and other members of the Late
5 Commission Wages Class are entitled to recover pre-judgment interest on all due penalty wages
6 under Labor Code Section 218.6 and/or Civil Code Section 3287(a).

7 **PRAYER FOR RELIEF**

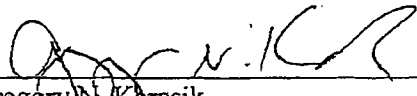
8 WHEREFORE, on behalf of herself and all others similarly situated, Plaintiff prays for
9 judgment against Defendants as follows:

- 10 A. An order certifying this case as a class action;
- 11 B. An order appointing Plaintiff as representative for the Class;
- 12 C. An order appointing Plaintiff's counsel as counsel for the Class;
- 13 D. Damages for unpaid sales commissions under Labor Code Sections 201 or 202;
- 14 E. Damages for unpaid vacation under Labor Code Section 227.3;
- 15 F. Restitution for unpaid sales commissions and/or unpaid under Business and
16 Professions Code Section 17203.
- 17 G. Damages for unpaid penalty wages under Labor Code Section 203;
- 18 H. Pre-judgment interest at the maximum legal rate;
- 19 I. Reasonable attorney's fees;
- 20 J. Costs of suit; and
- 21 K. Such other relief as the Court may deem just and proper.

22
23 Dated: September 8, 2011

KARASIK LAW FIRM

24
25 By


26 Gregory N. Karasik
27 Attorneys for Plaintiff
28 YASMIN MARTINEZ

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for herself and the class on all claims so triable.

Dated: September 8, 2011

KARASIK LAW FIRM

By



Gregory N. Karasik

Attorneys for Plaintiff

YASMIN MARTINEZ

ATTACHMENT CV-5012

CIVIL LAWSUIT NOTICE

Superior Court of California, County of Santa Clara
191 N. First St., San Jose, CA 95113

CASE NUMBER: **111CV209093****PLEASE READ THIS ENTIRE FORM**

PLAINTIFF (the person suing): Within 60 days after filing the lawsuit, you must serve each Defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

DEFENDANT (The person sued): You must do each of the following to protect your rights:

1. You must file a **written response** to the *Complaint*, using the proper legal form or format, in the Clerk's Office of the Court, within **30 days** of the date you were served with the *Summons* and *Complaint*;
2. You must serve by mail a copy of your written response on the Plaintiff's attorney or on the Plaintiff if Plaintiff has no attorney (to "serve by mail" means to have an adult other than yourself mail a copy); and
3. You must attend the first Case Management Conference.

Warning: If you, as the Defendant, do not follow these instructions,
you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court and the Superior Court of California, County of Santa Clara Local Civil Rules and use proper forms. You can obtain legal information, view the rules and receive forms, free of charge, from the Self-Help Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), www.sccselfservice.org (Select "Civil") or from:

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1toc.htm>

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: Honorable James Kleinberg Department: 1

The 1st CMC is scheduled for: (Completed by Clerk of Court)

Date: 3/9/2012 Time: 10:00AM in Department: 1

The next CMC is scheduled for: (Completed by party if the 1st CMC was continued or has passed)

Date: _____ Time: _____ in Department: _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
ALTERNATIVE DISPUTE RESOLUTION
INFORMATION SHEET / CIVIL DIVISION

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

What is ADR?

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

What are the advantages of choosing ADR instead of litigation?

ADR can have a number of advantages over litigation:

- < **ADR can save time.** A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- < **ADR can save money.** Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- < **ADR provides more participation.** Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- < **ADR provides more control and flexibility.** Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- < **ADR can reduce stress.** ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

What are the main forms of ADR offered by the Court?

< **Mediation** is an informal, confidential, flexible and non-binding process in the mediator helps the parties to understand the interests of everyone involved, and their practical and legal choices. The mediator helps the parties to communicate better, explore legal and practical settlement options, and reach an acceptable solution of the problem. The mediator does not decide the solution to the dispute; the parties do.

< Mediation may be appropriate when:

- < The parties want a non-adversary procedure
- < The parties have a continuing business or personal relationship
- < Communication problems are interfering with a resolution
- < There is an emotional element involved
- < The parties are interested in an injunction, consent decree, or other form of equitable relief

< **Neutral evaluation**, sometimes called "Early Neutral Evaluation" or "ENE", is an informal process in which the evaluator, an experienced neutral lawyer, hears a compact presentation of both sides of the case, gives a non-binding assessment of the strengths and weaknesses on each side, and predicts the likely outcome. The evaluator can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- < The parties are far apart in their view of the law or value of the case
- < The case involves a technical issue in which the evaluator has expertise
- < Case planning assistance would be helpful and would save legal fees and costs
- < The parties are interested in an injunction, consent decree, or other form of equitable relief

-over-

< **Arbitration** is a less formal process than a trial, with no jury. The arbitrator hears the evidence and arguments of the parties, then makes a written decision. The parties can agree to binding or non-binding arbitration. In binding arbitration, the arbitrator's decision is final and completely resolves the case, without the opportunity for appeal. In non-binding arbitration, the arbitrator's decision could resolve the case, without the opportunity for appeal, unless a party timely rejects the arbitrator's decision within 30 days and requests a trial. Private arbitrators are allowed to charge for their time.

Arbitration may be appropriate when:

- < The action is for personal injury, property damage, or breach of contract
- < Only monetary damages are sought
- < Witness testimony, under oath, needs to be evaluated
- < An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)

< **Civil Judge ADR** allows parties to have a mediation or settlement conference with an experienced judge of the Superior Court. Mediation is an informal, confidential, flexible and non-binding process in which the judge helps the parties to understand the interests of everyone involved, and their practical and legal choices. A settlement conference is an informal process in which the judge meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations. The request for mediation or settlement conference may be made promptly by stipulation (agreement) upon the filing of the Civil complaint and the answer. There is no charge for this service.

Civil Judge ADR may be appropriate when:

- < The parties have complex facts to review
- < The case involves multiple parties and problems
- < The courthouse surroundings would be helpful to the settlement process

< **Special masters and referees** are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

< **Settlement conferences** are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

What kind of disputes can be resolved by ADR?

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; collections; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; fraud; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; sports; trade secret; and wrongful death, among other matters.

Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, information about ADR procedures, or answers to other questions about ADR?

Contact:

Santa Clara County Superior Court
ADR Administrator
408-882-2530

Santa Clara County DRPA Coordinator
408-792-2910

ALTERNATIVE DISPUTE RESOLUTION INFORMATION SHEET/ CIVIL DIVISION

CV-5003 REV 8/08

Exhibit A
Page 28

ENDORSED

2011 OCT 19 A 10:21

David H. Yocum, Clerk of Superior Court
County of Santa Clara, California
D. Kontorovich

ANDREA M. KIMBALL (State Bar No. 196485)
SNR DENTON US LLP
4520 Main Street, Suite 1100
Kansas City, Missouri 64111-7700
Telephone: (816) 460-2427
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MARIE LEGGON WRIGHTEN (State Bar No. 167221)
VIRGINIA K. YOUNG (State Bar No. 174384)
SNR DENTON US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
Telephone: (213) 623-9300
Facsimile: (213) 623-9924
Email: marie.wrighten@snrdenton.com

Attorneys for Defendant
WIRELESS LIFESTYLE, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

YASMIN MARTINEZ, individually and on
behalf of other persons similarly situated,

Plaintiffs,

vs.

WIRELESS LIFESTYLE, INC.; and DOES
1 through 10,

Defendants.

No. 111CV209093

DEFENDANT WIRELESS LIFESTYLE,
INC.'S ANSWER TO COMPLAINT

Judge: Hon. James Kleinberg

Complaint filed: September 13, 2011

Defendant Wireless Lifestyle, Inc. ("Wireless Lifestyle") on behalf of itself and no
others, hereby answers the unverified Complaint of plaintiff Yasmin Martinez ("Plaintiff") as
follows:

Exhibit A
Page 29

GENERAL DENIAL

Pursuant to California Code of Civil Procedure § 431.30(d), Wireless Lifestyle generally denies each and every allegation of the Complaint and specifically denies that Plaintiff is entitled to the relief she seeks, or any other relief, by reason of her Complaint.

AFFIRMATIVE DEFENSESFIRST ADDITIONAL DEFENSE

The Complaint, and each and every cause of action contained therein, fails to state facts sufficient to constitute a cause of action against Wireless Lifestyle.

SECOND ADDITIONAL DEFENSE

Plaintiff is barred from obtaining the relief requested in the Complaint by the doctrine of unclean hands.

THIRD ADDITIONAL DEFENSE

Plaintiff is barred from obtaining the relief requested in the Complaint by the doctrine of estoppel.

FOURTH ADDITIONAL DEFENSE

Plaintiff is barred from obtaining the relief requested in the Complaint by the doctrine of waiver.

FIFTH ADDITIONAL DEFENSE

Plaintiff is barred from obtaining the relief requested in the Complaint by the doctrine of laches.

SIXTH ADDITIONAL DEFENSE

Plaintiff's claims are barred by the doctrine of accord and satisfaction.

SEVENTH ADDITIONAL DEFENSE

Plaintiff consented to all the acts and omissions about which Plaintiff now complains.

SNR DENTON US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Exhibit A
Page 30

EIGHTH ADDITIONAL DEFENSE

To the extent that Plaintiff has failed to mitigate, minimize, or avoid any damages she has allegedly sustained, recovery against Wireless Lifestyle, if any, must be reduced by that amount.

NINTH ADDITIONAL DEFENSE

Plaintiff's claims, if any, are barred because Wireless Lifestyle's acts and/or omissions were in good faith, Wireless Lifestyle had reasonable grounds to believe that its acts and/or omissions did not violate any law, and Wireless Lifestyle believed in good faith that it was asserting legal rights. Thus, Wireless Lifestyle acted with proper justification and in a reasonable and appropriate manner, in good faith, for a fair, honest, and lawful reason, and in compliance with legal requirements.

TENTH ADDITIONAL DEFENSE

The Complaint, and each and every purported cause of action therein, is barred by the applicable statutes of limitations, including, but not limited to, California Code of Civil Procedure §§ 337, 338, 339, 340, and 343, and California Business and Professions Code 17208.

ELEVENTH ADDITIONAL DEFENSE

The Complaint, to the extent that it seeks relief and/or judgment on behalf of persons who are not parties to this action, violates Wireless Lifestyle's rights to substantive and procedural due process and equal protection under the law as provided by the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 7 and Article IV, Section 16 of the Constitution of the State of California.

TWELFTH ADDITIONAL DEFENSE

Plaintiff is barred, either in whole or in part, from recovering waiting time penalties from Wireless Lifestyle because the existence of any unpaid wages, which Wireless Lifestyle expressly denies, was and is the subject of a good faith dispute.

Exhibit A
Page 31

THIRTEENTH ADDITIONAL DEFENSE

Plaintiff's Complaint is barred because the appropriate forum for this action is before the California Labor Commissioner and/or the San Jose Office of Division of Labor Standards Enforcement.

FOURTEENTH ADDITIONAL DEFENSE

To the extent a class is certified in this purported class action, claims of individual class members may be barred for reasons that are not apparent from the Complaint. Wireless Lifestyle reserves its right to amend its Answer to the Complaint to assert such additional defenses as may become apparent.

FIFTEENTH ADDITIONAL DEFENSE

To the extent that Plaintiff claims that the matter should proceed as a class action, Wireless Lifestyle denies that Plaintiff is an adequate class representative.

SIXTEENTH ADDITIONAL DEFENSE

With respect to each and every allegation of the Complaint as they relate to the request for class certification, class certification is not appropriate because there is a lack of numerosity, commonality or community of interest, typicality, an ascertainable class, adequate representation, appropriateness of relief to the putative class as a whole, predominance of common questions over questions affecting individual class members, substantial benefit to the litigants and the court, and superiority of a class action to other available methods for fair and efficient adjudication.

SEVENTEENTH ADDITIONAL DEFENSE

The Complaint fails to state an adequate basis for a representative action under California Business and Professions Code §17200 et seq.

EIGHTEENTH ADDITIONAL DEFENSE

Plaintiff lacks standing to assert some or all of the claims in the Complaint.

NINETEENTH ADDITIONAL DEFENSE

Plaintiff's claims are barred because Plaintiff has not sustained any cognizable injury.

SNR DENTON US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Exhibit APage 32

TWENTIETH ADDITIONAL DEFENSE

Plaintiff's claims are barred because at all times mentioned in the Complaint, certain members of the purported class were exempt from the requirements contained in the California Labor Code, Title 8 of the California Code of Regulations, and the wage orders of the Industrial Welfare Commission.

TWENTY-FIRST ADDITIONAL DEFENSE

Wireless Lifestyle reserves the right to amend its Answer to the Complaint to assert such additional defenses as may become apparent during the continuing course of investigation and discovery in this action.

WHEREFORE, Defendant prays for judgment as follows:

1. Plaintiff take nothing by way of her Complaint;
2. That the Complaint be dismissed with prejudice and judgment entered in favor of Wireless Lifestyle;
3. That Wireless Lifestyle be awarded costs and attorneys' fees incurred in this action;
- and
4. For such other and further relief as this Court deems just and proper.

Dated: October 19, 2011

SNR DENTON US LLP
MARIE LEGGON WRIGHTEN

By 
MARIE LEGGON WRIGHTEN

Attorneys for Defendants
WIRELESS LIFESTYLE, INC.

30384942\V-1

Exhibit A
Page 33

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California, I am over the age of 18 and not a party to the within action. My business address is: ☐ 601 So. Figueroa Street, Suite 2500, Los Angeles, CA 90017. ☒ USA Legal Network, 800 W. 1st, Suite 200-B, Los Angeles, CA 90012.

On October 19, 2011, I served the foregoing document, described as DEFENDANT WIRELESS LIFESTYLE, INC.'S ANSWER TO COMPLAINT on the interested parties in this action, as follows:

Gregory N. Karasik
Karasik Law Firm
11835 W. Olympic Blvd., Suite 1275
Los Angeles, CA 90064
Tel: 310-312-6800
Fax: 310-943-2582
Email: greg@karasiklawfirm.com

☐ (VIA MAIL) I placed a true copy of the foregoing document in an envelope addressed to each interested party as set forth above. I sealed each such envelope, and placed same, with postage thereon fully prepaid, for collection and mailing at SNR Denton US LLP, Los Angeles, California 90017. I am readily familiar with SNR Denton US LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.

☒ (VIA PERSONAL SERVICE) I served a true copy of the within document on the interested parties in this action by personally hand delivering a copy of said document to the addressee listed on this proof.

☐ (VIA FACSIMILE) I caused a true copy of the foregoing document to be served by facsimile transmission to each interested party at the respective facsimile numbers listed. A transmission report was properly issued by the sending facsimile machine for each interested party served.

☐ (VIA ELECTRONIC MAIL) I transmitted the above document(s) by electronic mail to the interested parties via the e-mail addresses listed above for each party.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 19, 2011, at Los Angeles, California.

Signature

Jose Osorio

Print Name

Exhibit

A

Page

34

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California, I am over the age of 18 and not a party to the within action. My business address is: ☐ 601 So. Figueroa Street, Suite 2500, Los Angeles, CA 90017. ☒ USA Legal Network, 800 W. 1st, Suite 200-B, Los Angeles, CA 90012.

On October 19, 2011, I served the foregoing document, described as DEFENDANT WIRELESS LIFESTYLE, INC.'S ANSWER TO COMPLAINT on the interested parties in this action, as follows:

Sahag Majarian II
Law Office of Sahag Majarian II
18250 Ventura Blvd.
Tarzana, CA 91356
Tel: 818-609-0807
Fax: 818-609-0892
Email: sahaigi@aol.com

☐ (VIA MAIL) I placed a true copy of the foregoing document in an envelope addressed to each interested party as set forth above. I sealed each such envelope, and placed same, with postage thereon fully prepaid, for collection and mailing at SNR Denton US LLP, Los Angeles, California 90017. I am readily familiar with SNR Denton US LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.

☒ (VIA PERSONAL SERVICE) I served a true copy of the within document on the interested parties in this action by personally hand delivering a copy of said document to the addressee listed on this proof.

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☐ (VIA ELECTRONIC MAIL) I transmitted the above document(s) by electronic mail to the interested parties via the e-mail addresses listed above for each party.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 19, 2011, at Los Angeles, California.

Signature

Jose Osorio

Print Name

Exhibit A

Page 35

EXHIBIT B



**Service of Process
Transmittal**

09/19/2011

CT Log Number 519181548



TO: Igor Kushnir
Pasha Distribution Corporation
7864 Barton St
Lenexa, KS 66214

RE: Process Served in California

FOR: Pasha Distribution Corporation (Domestic State: KS)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Yasmin Martinez, individually and on behalf of other persons similarly situated, Pltf. vs. Wireless Lifestyle, Inc, et al., Dfts

DOCUMENT(S) SERVED: Cover Sheet, Attachment(s), Summons, Complaint, Demand, Notice

COURT/AGENCY: Santa Clara County - Superior Court - San Jose, CA
Case # 111CV209093

NATURE OF ACTION: Employee Litigation - Class Action - Failure to pay commission and regular wages upon termination

ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE: By Process Server on 09/19/2011 at 14:55

JURISDICTION SERVED : California

APPEARANCE OR ANSWER DUE: Within 30 days after service - File written response // 3/9/12 at 10:00 a.m. - Case Management Conference // 15 days prior to the Case Management Conference - File Case Management Statement

ATTORNEY(S) / SENDER(S): Gregory N. Karasik
Karasik Law Firm
11835 W. Olympic Blvd.
Suite 1275
Los Angeles, CA 90064
310 312 6800

REMARKS: Wireless Lifestyle, Inc changed its name to Pasha Distribution Corporation on 4/29/11

ACTION ITEMS: SOP Papers with Transmittal, via Fed Ex Standard Overnight , 797538997408

SIGNED: C T Corporation System
PER: Nancy Flores
ADDRESS: 818 West Seventh Street
Los Angeles, CA 90017
TELEPHONE: 213-337-4615

Page 1 of 1 / JC

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

Exhibit B
Page 36

EXHIBIT C

1 ANDREA M. KIMBALL (State Bar No. 196485)
2 SNR DENTON US LLP
3 4520 Main Street, Suite 1100
4 Kansas City, Missouri 64111-7700
5 Telephone: (816) 460-2400
6 Facsimile: (816) 531-7545
7 Email: andrea.kimball@snrdenton.com

8 MARIE LEGGON WRIGHTEN (State Bar No. 167221)
9 VIRGINIA K. YOUNG (State Bar No. 174384)
10 SNR DENTON US LLP
11 601 South Figueroa Street, Suite 2500
12 Los Angeles, California 90017-5704
13 Telephone: (213) 623-9300
14 Facsimile: (213) 623-9924
15 Email: marie.wrighten@snrdenton.com
16 virginia.young@snrdenton.com

17 Attorneys for Defendant
18 WIRELESS LIFESTYLE,
19 INC.

20
21 IN THE UNITED STATES DISTRICT COURT
22 FOR THE NORTHERN DISTRICT OF CALIFORNIA
23
24 SAN JOSE DIVISION

25 YASMIN MARTINEZ, individually and on
26 behalf of other persons similarly situated,

27 Plaintiff,

28 vs.

WIRELESS LIFESTYLE, INC.; and DOES
1 through 10,

Defendant.

No.

DECLARATION OF KIMBERLY
RAWLINGS IN SUPPORT OF
DEFENDANT WIRELESS LIFESTYLE,
INC.'S NOTICE OF REMOVAL

Exhibit

Page

0

37

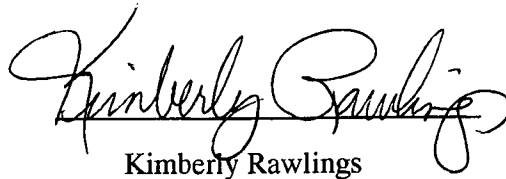
1 I, Kimberly Rawlings, declare as follows:

2 1. I am employed by Wireless Lifestyle, Inc. ("Wireless Lifestyle"). As Human
3 Resources Director for Wireless Lifestyle, I have personal knowledge of the facts set forth
4 below, and if called as a witness, could and would completely testify thereto.

5 2. Following service of the complaint in the action *Yasmin Martinez, individually and*
6 *on behalf other persons similarly situated, v. Wireless Lifestyle, Inc.*, Case No. 111CV209093,
7 Wireless Lifestyle compiled information from its personnel records regarding Yasmin
8 Martinez's earnings while employed by Wireless Lifestyle in California from November 1,
9 2010, to May 23, 2011. The electronic data that was used to compile this information is entered
10 and stored on Wireless Lifestyle's computer systems in the ordinary course and scope of
11 Wireless Lifestyle's business. Wireless Lifestyle completed compiling this information on or
12 around October 4, 2011.

13 3. Based on Wireless Lifestyle's electronic personnel records, Plaintiff worked for
14 Wireless Lifestyle in the state of California from November 1, 2010, to May 23, 2011, at which
15 time her employment was terminated. Wireless Lifestyle's electronic records reflect that during
16 this time frame Plaintiff's regular salary was \$1,307.69 per two-week pay period, averaging
17 \$2,833.33 per month or \$130.77 per business day. In addition, Plaintiff earned commissions
18 averaging \$1,153.99 per month or \$53.26 per business day.

19 I declare under penalty of perjury and the laws of the United States and the states of
20 Kansas and California that the foregoing is true and correct. Executed on October 19, 2011, at
21 Lenexa, Kansas.

22 
23
24 Kimberly Rawlings

25
26
27 Exhibit 1
28 Page 38